

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments implement the federal Justice for Victims of Trafficking Act (Pub. L. No. 114-22). This law requires state child protective service agencies to consider a child to be a victim of “child abuse and neglect” and of “sexual abuse” if the child is identified as being a victim of sex trafficking or a victim of a severe form of trafficking in persons. This law also requires individuals who patronize or solicit persons for a commercial sex act to be equally culpable for sex trafficking offenses.

In addition, these amendments add an eleventh category of abuse, child sex trafficking, in accordance with Pub. L. No. 114-22 and 2016 Iowa Acts, Senate File 2258, and modify the current categories of sexual abuse.

Any interested person may make written comments on the proposed amendments on or before August 23, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there may be an impact on jobs. All perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years of age or older who reside in a home with the child whom they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse who are 14 to 17 years of age may also have their names withheld from the Central Abuse Registry upon order from the court.

These amendments are intended to implement Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258.

The following amendments are proposed.

ITEM 1. Amend rule **441—175.21(232,235A)**, definitions of “Child abuse assessment,” “Sex trafficking,” and “Sex trafficking victim,” as follows:

“*Child abuse assessment*” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2) “a”(1) through (3) and (5) through ~~(10)~~ (11); or which allege child abuse as defined in Iowa Code section 232.68(2) “a”(4) as amended by 2016 Iowa Acts, Senate File 2258, that also allege imminent danger, death, or injury to a child. A “child abuse assessment” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

“*Sex trafficking*,” ~~as provided in 22 U.S.C. Section 7102(10)~~, means the recruitment, harboring, transportation, provision, ~~or obtaining~~, patronizing, or soliciting of a person for the purpose of a commercial sex act sexual activity as defined in Iowa Code section 710A.1.

“*Sex trafficking victim*,” ~~as provided in 42 U.S.C. Section 675(9)~~, means any of the following: a victim of sex trafficking.

1. ~~A victim of sex trafficking.~~
2. ~~A victim of a severe form of trafficking in persons.~~

ITEM 2. Adopt the following **new** definitions of “Home” and “Reside” in rule **441—175.21(232,235A)**:

“*Home*” means a permanent or temporary structure where one resides, including a licensed foster family home. For the purpose of this chapter, “home” shall not be construed to include any public or private facility, such as an institution, hospital, health care facility, intermediate care facility for persons with an intellectual disability, residential care facility for persons with an intellectual disability, skilled nursing facility, group care, mental health facility, residential treatment facility, shelter care facility, detention facility, licensed day care center, or child foster care provided by an agency.

“*Reside*” or “*resides*” means to habitually sleep or live. A person’s subjective intent as to where the person resides is not relevant.

ITEM 3. Rescind the definitions of “Commercial sex act,” and “Severe form of trafficking in persons,” in rule **441—175.21(232,235A)**.

ITEM 4. Amend paragraph **175.22(2)“b”** as follows:

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section 232.68(2)“e,” 232.68(2)“a”(3) as amended by 2016 Iowa Acts, Senate File 2258, except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker or was not a person who resides in a home with the child, the department shall refer the report to law enforcement orally ~~and~~, as soon as practicable, and follow up in writing within 72 hours of receiving the report.

ITEM 5. Amend paragraph **175.24(1)“b”** as follows:

b. The alleged perpetrator of child abuse is ~~a caretaker~~:

- (1) A caretaker; or
- (2) A person who resides in a home with the child, if the allegation is sexual abuse, as defined in Iowa Code section 232.68(2)“a”(3) as amended by 2016 Iowa Acts, Senate File 2258; or
- (3) A person who engages in or allows child sex trafficking as defined in Iowa Code section 232.68(2)“a”(11).

ITEM 6. Amend paragraph **175.24(2)“a”** as follows:

a. A child abuse assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2)“a”(1) through (3) and (5) through ~~(10)~~ (11); or which allege child abuse as defined in Iowa Code section ~~232.68(4)~~ 232.68(2)“a”(4) as amended by 2016 Iowa Acts, Senate File 2258, that also allege imminent danger, death, or injury to a child. If one or more of the following factors are met, a child abuse assessment shall be required:

- (1) to (10) No change.